

## **REMARKS**

By the present amendment, Applicant has amended Claim 1 and cancelled Claims 2 through 4. Independent Claim 1 remains pending in the present application.

In the recent Office Action the Examiner rejected Claims 2-4 under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant has cancelled Claims 2-4

In the recent Office Action the Examiner rejected Claims 1-4 under 35 U.S.C. § 103(a) as being unpatentable over Klein (U.S. 2002/0027142) in view of Griffin et al (5,732,851). The cancellation of Claims 2-4 by the present amendment serves to render these particular grounds of rejection moot.

Applicant has amended independent Claim 1 in form only and has introduced no new or additional structural limitations. Applicant will advance arguments hereinbelow to illustrate the manner in which the presently claimed invention is patentably distinguishable from the cited and applied prior art. Reconsideration of the present application is respectfully requested.

The Examiner rejected Claim 1 under 35 U.S.C. 103(a) as being unpatentable over Klein in view of Griffin. This rejection is respectfully traversed.

The Examiner's rejection states that Klein discloses a centered vertical support column 4a which provides support to the held container C. However, Klein describes element 4a as a circular depression that creates circular ring 86 (page 3, ¶ [0054], and Fig. 2A). The can C holder is shoulder 22 formed by inward protuberances (page 3, ¶ [0052], Fig. 2A). These inward protuberances do not meet the claimed limitation of a **centered vertical support column** (see, for example, Applicant's Fig. 1, element 30).

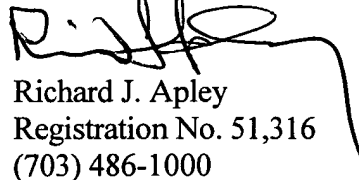
The Examiner's rejection fails to disclose where Klein (or Griffin) possesses the claimed **upper funnel and support ribs**. Applicant notes that neither reference has an upper funnel with support ribs that support the container in a spaced relation to the walls of the holder (see, for example, Applicant's Figs. 1 and 4, element 14).

The Examiner's rejection concedes that Klein does not possess the upper funnel with an upper rim taller than the container held therein. To overcome this deficiency, the Examiner relies upon the teachings found in Griffin. The Examiner states that Griffin teaches a beverage can holder having an upper funnel with an upper rim taller than the container being held. The Examiner then concludes that it would have been obvious "*to add an upper funnel to provide a smooth, cup-like upper drinking portion. The cup-like drinking portion makes it easier to drink from than drinking from the beverage can which provides the hazard of sharp edges that can cut a user's lip. The upper funnel is also a replacement of an upper cap with drinking orifice that was provided in Klein.*" It is axiomatic in patent practice that the basic requirement of a *prima facie* case of obviousness is that there must be some suggestion or motivation, either in the references themselves or in the knowledge

generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Equally axiomatic, is that the proposed modification cannot render the prior art unsatisfactory for its intended purpose; nor that the proposed modification change the principle of operation of the reference (see MPEP §§ 2143 and 2143.01). The Examiner's modification appears to violate these axiomatic principles of patent practice. As seen in Klein's Fig. 2A, the holder 21 has an upper rim 10 **which is below the can C**. Klein clearly states at ¶ [0052] that "... shoulder 22 supports can C to clearly dispose the upper rim R of the can above upper edge 10 of the housing 19. This permits the can C to be conveniently grasped and removed from the housing." Clearly, it would not have been obvious to change or modify Klein's specific structure. Furthermore, Klein discloses that the lid 12 and valve 25 "... have features that do not require removal of twist valve 25 for beverage flow through twist valve 25." (see ¶ [0048]). Again, it is clear that the Examiner's removal of the lid and valve would change the operation and function of the Klein device.

Reconsideration of the claim in light of the foregoing arguments is respectfully requested. For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance. If such is not the case, the Examiner is requested to kindly contact the undersigned in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,

  
Richard J. Apley  
Registration No. 51,316  
(703) 486-1000

RJA;dht  
Attachment: Power of Attorney